

 **Maryland**
Department of Economic &
Employment Development

William Donald Schaefer, Governor
J. Randall Evans, Secretary

Board of Appeals
1100 North Eutaw Street
Baltimore, Maryland 21201
Telephone: (301) 333-5032

Board of Appeals
Thomas W. Keech, Chairman
Hazel A. Warnick, Associate Member
Donna P. Watts, Associate Member

— DECISION —

	Decision No.:	912-BR-89	
	Date:	October 20, 1989	
Claimant:	Richard E. Stitely	Appeal No.:	8907018
		S. S. No.:	
Employer:	R. W. Warner, Inc.	L. O. No.:	50
		Appellant:	CLAIMANT

Issue: Whether the claimant is receiving or has received a governmental or other pension, retirement or retired pay, annuity or other similar periodic payment which is based on any previous work of such individual, which is equal to or in excess of his weekly benefit amount within the meaning of Section 6(g) of the law.

— NOTICE OF RIGHT OF APPEAL TO COURT —

YOU MAY FILE AN APPEAL FROM THIS DECISION IN ACCORDANCE WITH THE LAWS OF MARYLAND. THE APPEAL MAY BE TAKEN IN PERSON OR THROUGH AN ATTORNEY IN THE CIRCUIT COURT OF BALTIMORE CITY, IF YOU RESIDE IN BALTIMORE CITY, OR THE CIRCUIT COURT OF THE COUNTY IN MARYLAND IN WHICH YOU RESIDE.

THE PERIOD FOR FILING AN APPEAL EXPIRES AT MIDNIGHT ON November 19, 1989

— APPEARANCES —

FOR THE CLAIMANT:

FOR THE EMPLOYER:

REVIEW ON THE RECORD

Upon review of the record in this case, the Board of Appeals modifies the decision of the Hearing Examiner.

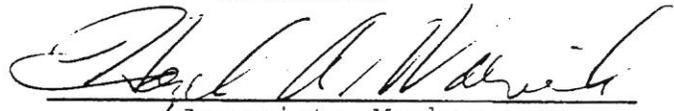
The Hearing Examiner correctly concluded that the total amount that the claimant received from his non-contributory profit sharing plan (\$41,113.86) had to be included in determining his reduction in unemployment insurance benefits. The fact that the claimant "held back \$7,000.00 to pay for taxes" is irrelevant. The total amount from such a non-contributory plan must be allocated to a number of weeks following the date of separation, according to the number of weeks of pay received at the claimant's last pay rate, pursuant to Section 6(g) (3) (ii), regardless of what the claimant does with the lump sum. See, e.g., Taylor v. Department of Employment and Training, 308 Md. 468, 520 A2d. 379 (1987) (pensions rolled over to an I.R.A. are still deductible from benefits.)

The record here indicates that the claimant's last pay rate was \$400.00 per week. Dividing \$41,113.86 by \$400.00 results in a disqualification period of up to 102 weeks beginning April 30, 1989, for as long as the employer is still in his base period during those 102 weeks.

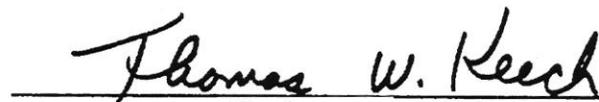
DECISION

The claimant received a lump sum pension in the amount of \$41,113.86. This amount must be deducted from his weekly benefits. Benefits are denied from the week beginning April 30, 1989 and for the next 101 weeks or until R. w. Warner, Inc. is no longer a base period employer of this claimant, whichever occurs first.

The decision of the Hearing Examiner is modified.



Associate Member



Chairman

H:K
kmb

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CLAIMANT

EMPLOYER

OUT-OF-STATE CLAIMS

John T. McGucken, Legal Counsel, D.E.E.D.